

EXHIBIT D

Goldsmith, Andrew M.

From: Goldsmith, Andrew M.
Sent: Tuesday, March 14, 2023 6:57 PM
To: 'lawatf@aol.com'
Cc: 'vikerlaw@gmail.com'; 'keisha.rice@gmail.com'; Zakarin, Donald S.; Farkas, Ilene S.; Maida, Brian M.
Subject: RE: Liability PTO - Revised
Attachments: Revised Liability PTO [Based on version from Plaintiffs dated 2.21.23].DOCX; Liability PTO.pdf

Pat:

Please see attached clean (PDF) and redline (Word). I input all your changes (except the one you agreed to take out as noted below).

You'll see that we added content and broke out Exhibit 213 into three sub-Exhibits, 213-A, 213-B and 213-C. I imported your objections to 213 into all 3 of these sub-Exhibits because I assumed you would want to make the same objections.

If you have no further changes, please sign and return the attached PDF.

Thanks,

ANDREW M. GOLDSMITH
PRYOR CASHMAN LLP
7 Times Square, New York, NY 10036-6569
Direct Tel: 212-326-0419
www.pryorcashman.com
A member of Interlaw, an International Association of Independent Law Firms

From: Goldsmith, Andrew M.
Sent: Tuesday, March 14, 2023 5:04 PM
To: lawatf@aol.com
Cc: vikerlaw@gmail.com; keisha.rice@gmail.com; Zakarin, Donald S. <DZakarin@PRYORCASHMAN.com>; Farkas, Ilene S. <IFarkas@PRYORCASHMAN.com>; Maida, Brian M. <BMaida@PRYORCASHMAN.com>
Subject: RE: Liability PTO - Revised

Thanks. Understood. Will send revised draft shortly.

ANDREW M. GOLDSMITH
PRYOR CASHMAN LLP
7 Times Square, New York, NY 10036-6569
Direct Tel: 212-326-0419
www.pryorcashman.com
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHRYN TOWNSEND GRIFFIN, THE ESTATE
OF CERRIGALE TOWNSEND and THE HELEN
CHRISTINE TOWNSEND MCDONALD TRUST

Plaintiffs,

-against-

EDWARD CHRISTOPHER SHEERAN, p/k/a ED
SHEERAN, ATLANTIC RECORDING
CORPORATION, d/b/a ATLANTIC RECORDS,
SONY/ATV MUSIC PUBLISHING, LLC, and
WARNER MUSIC GROUP CORPORATION, d/b/a
ASYLUM RECORDS

Defendants.

ECF CASE

17-cv-5221 (LLS)

**PRETRIAL CONSENT ORDER
[LIABILITY PHASE]**

THE PARTIES, having exchanged proposed findings and counter-findings of fact in accordance with the Pretrial Procedures of United States District Judge Louis L. Stanton, hereby submit the following:

A. Agreed Findings of Fact

1. In 1973, Edward Benjamin Townsend (“Townsend”) authored the musical composition “Let’s Get It On.”

2. On or about July 17, 1973, music publishers Stone Diamond Music Corp. (“Stone Diamond”) and Cherritown Music Co. (“Cherritown Music”), Ed Townsend’s music publishing company, as copyright owners, filed an Application for Registration of a Claim to Copyright with the U.S. Copyright Office for the musical composition “Let’s Get It On,” depositing with the Copyright Office two complete copies of the best edition of “Let’s Get It On” then published, which copies consisted of written sheet music (the “Deposit Copy”).

3. In or around July 1973, the Copyright Office registered “Let’s Get It On,” as

Exhibit No.	Description	Objection(s)
200	The “Let’s Get It On” Deposit Copy with Dr. Ferrara’s handwritten notations, together with Dr. Ferrara’s reproduction of the Deposit Copy in more legible format with added markings and Dr. Ferrara’s transposed transcription of the Deposit Copy into the key of D major with added markings	Rule 403. Defendants’ expert’s anticipated alterations of an original document presuppose prejudice and substantial risk of confusion.
201	Excerpts from the book “Money Chords” by Richard J. Scott	Rule 401; Rule 403, Rule 802. The excerpts in question constitute inadmissible hearsay.
202	Excerpts from the book “Guitar For Advanced Beginners” by Dan Emery	Rule 401; Rule 403; Rule 802. The excerpts in question constitute inadmissible hearsay.
203	Excerpts from the book “How To Play Rock ‘N’ Roll Piano” by Palmer Hughes	Rule 401; Rule 403; Rule 802.
204	Excerpts from the book “Chord Progressions for Guitar” by Tom Kolb	Rule 401; Rule 403; Rule 802.
205	Excerpts of the Deposition of Helen McDonald – specifically, pages 1-3, 16-24, 79-81, 87-91 and 112	Rule 403.
206	Dr. Stewart’s “Score” of “Thinking Out Loud” (Farkas Summary Judgment Decl. Ex. 8)	Rule 401; Rule 403; Rule 802.
207	Audio Exhibit of “Melody A” as played by Dr. Lawrence Ferrara on piano	Rule 401; Rule 403; Rule 802.
208	Audio Exhibit of “Melody B” as played by Dr. Lawrence Ferrara on piano	Rule 401; Rule 403; Rule 802.
209	Audio Exhibit of “Melody C” as played by Dr. Lawrence Ferrara on piano	Rule 401; Rule 403; Rule 802.
210	List of Songs that embody the basic I-iii-IV-V chord progression used in “Let’s Get It On” or the basic I-I/3-IV-V chord progression used in “Thinking Out Loud”	Rule 401; Rule 403; Rule 802.

211	Published Sheet music for “Get Off My Cloud” (1965 by The Rolling Stones)	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403
212	Published Sheet music for: (1) “People Get Ready” (1964 by Curtis Mayfield and The Impressions); (2) “Lo and Behold” (1970 by James Taylor); (3) “Billie Jean” (1983 by Michael Jackson); (4) “Learning To Fly” (1991 by Tom Petty); and (5) “Should’ve Been A Cowboy” (1993 by Toby Keith)	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403
213-A	Published Sheet music for the following works of Van Morrison: (1) “Crazy Love” (1970); (2) “Tupelo Honey” (1971); (3) “Checkin’ It Out” (1978); (4) “Bright Side of the Road” (1979); (5) “Tore Down A La Rimbaud” (1984); and (6) “Have I Told You Lately” (1989)	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403
213-B	Dr. Ferrara’s transcription of portions of “Why Must I Always Explain” by Van Morrison (1991)	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403
213-C	Commercial sound recordings of the following Van Morrison works: (1) “Crazy Love,” (2) “Tupelo Honey,” (3) “Tore Down a La Rimbaud,” and (4) “Why Must I Always Explain.”	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403
214	List of Prior Ed Sheeran Songs That Use The “Anticipation” Technique	Federal Rules of Civil Procedure, Rule 26, not previously disclosed; Rule 401 and 403

Dated this 15th day of March, 2023.

FRANK & RICE, P.A.

By: _____
Patrick R. Frank, Esq.
Keisha D. Rice, Esq.
Katherine Viker, Esq.
325 West Park Avenue
Tallahassee, Florida 32301
Telephone: (850) 629-4168
Facsimile: (850) 629-4184
Attorneys for Plaintiffs

PRYOR CASHMAN LLP

By: _____
Donald S. Zakarin
Ilene S. Farkas
Andrew M. Goldsmith
Brian M. Maida
7 Times Square
New York, New York 10036
(212) 421-4100
Attorneys for Defendants

SO ORDERED.

Dated this _____ day of March, 2023.

The Honorable Louis L. Stanton
United District Court Judge